IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.9935 of 1998

Dated: 01-05-2007

Between:

1. Moka Marudrudu, s/o Sameru,
   aged about 37 years,
   r/o Polatitippa village,
   Bandar Mandal,
   Krishna District and another.

... Petitioners

and

1. The Deputy Commissioner of Excise,
   Kakinada,
   East Godavari District and 2 others.

... Respondents

ORDER:

Questioning the proceedings in Cr.Nos.66/97/DPE/B2 and 67/97/DPE/B2 on the file of the second respondent – Commissioner of Excise, the present writ petition has been filed seeking to declare the said proceedings as illegal and void.

2. Facts, in brief, are: The third respondent – Station House Officer,

Inaguduru Police Station inspected the boats belong to petitioners on 20-08-1996 and alleged to have found 275 litres of I.D. liquor in the boat of first petitioner and 225 litres of I.D. liquor in the boat of second petitioner. The third respondent alleged that one Moka Venkateswara Rao was present in the boat of first petitioner and the I.D. liquor seized from the boat of second petitioner belongs to one Moka Anjaneyulu. The third respondent seized the boats in exercise of powers under Section 50 of the Andhra Pradesh Excise Act. Thereupon, petitioners approached this Court and filed W.P.No.17806 of 1996, wherein this Court directed the authorities to release the boats on furnishing bank guarantee for a sum of Rs.50,000/- and accordingly the boats were released. While so, the first respondent – Deputy Commissioner of Excise issued a show cause notice to petitioners on 03-10-1996, for which they submitted an explanation stating that they have nothing to do with the contraband liquor that was seized from their boats. The first respondent passed on order on 05-10-1996 directing confiscation of their boats. Aggrieved thereby, petitioners preferred representations before second respondent and second respondent by his proceedings dated 26-08-1997 confirmed the order dated 05-10-1996 passed by first respondent. Assailing the said proceedings, petitioners approached this Court by way of present writ petition.

3. Despite the fact that the notices are served on respondents, they have not chosen to file any counter affidavit.

4. Heard learned counsel for the parties.

5. According to learned counsel for petitioners, petitioners herein are arrayed as A-3 and A-4 in C.C.No.1864 of 1998 on the file of the Court of the learned Special Judicial Magistrate of First Class for Prohibition and Excise cases, Machilipatnam and the learned Magistrate after conducting

trial while holding that A-1 and A-2 therein are guilty of an offence punishable under Section 8(b) of the Andhra Pradesh Prohibition Act, however, acquitted the petitioners herein. Learned counsel also contended that petitioners have no knowledge about the contraband that was seized and at the time of seizure also they were not present at the boats.

6. Having heard learned counsel for petitioners this Court is of the view that petitioners cannot be said to be having knowledge about the said contraband seized from out of the possession of others, who are arrayed as A-1 and A-2 in C.C.No.1864 of 1998. May be it is true that petitioners are the owners of the Motorboats, but on that score, it cannot be said that the said Motorboats are liable for confiscation. In this context it may be relevant to refer a Full Bench judgment of this Court in **V. NARAYANA RAO v. STATE OF A.P.**[1], wherein at paragraph 9 it is held as follows--

> "9. In our opinion the authorities ought to have considered the provisions of the Excise Act in proper perspective. There is no *mens rea* to commit the offence on the part of the petitioner which is one of the relevant considerations before ordering confiscation and seizure of the vehicle. In the instant case we hold that *mens rea* is totally absent. Therefore, there cannot be an order of confiscation of the goods or the vehicle. We, therefore, allow both the writ petitions and quash the impugned orders in both these writ petitions. The security or bank guarantee, if any, furnished by the petitioners in both the writ petitions shall be released forthwith. Since we decided the case on facts and circumstances of the case we do no propose to answer the reference made by the learned single Judge. The writ petitions are accordingly allowed. No costs."

7. As the contention of learned counsel for petitioners that petitioners herein have no knowledge and the required element of *mens rea* was

absent, this Court is of the view that petitioners are entitled to get back the Motorboats that were seized and confiscated.

8. Accordingly, the writ petition is allowed setting aside the proceedings dated 26-08-1997 passed by second respondent. No costs.

Having regard to the fact that the Motorboats were released on furnishing bank guarantee, the bank guarantee shall be returned to petitioners forthwith.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.01-05-2007
GLV

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[1] 2002 (5) ALT 91 (F.B)